A Glance on the Ecclesiastical Commission:

BEING A

DISCOURSE

Concerning the

Power of Making and Altering

Ecclesiastical Laws,

AND

The Settling Religion;

Whether it belongs to

Our KINGS Alone,

AND A

CONVOCATION:

OR,

Whether it must not be Asserted rather,

☞ No Medling with Law-Making, or Law-Mending, (whether Ecclesiastical or Temporal,) but by Authority of Parliament?

In hoc Reges, sicut eis Divinitùs præcipitur, Deo serviunt in quantum Reges sunt, si in suo Regno bona jubeant, mala prohibeant, non solum quæ pertinent ad humanum Societatem, verum etiam quæ pertinent ad Divinam Religionem. Aug. Cont. Cres. l. 3. c. 51.

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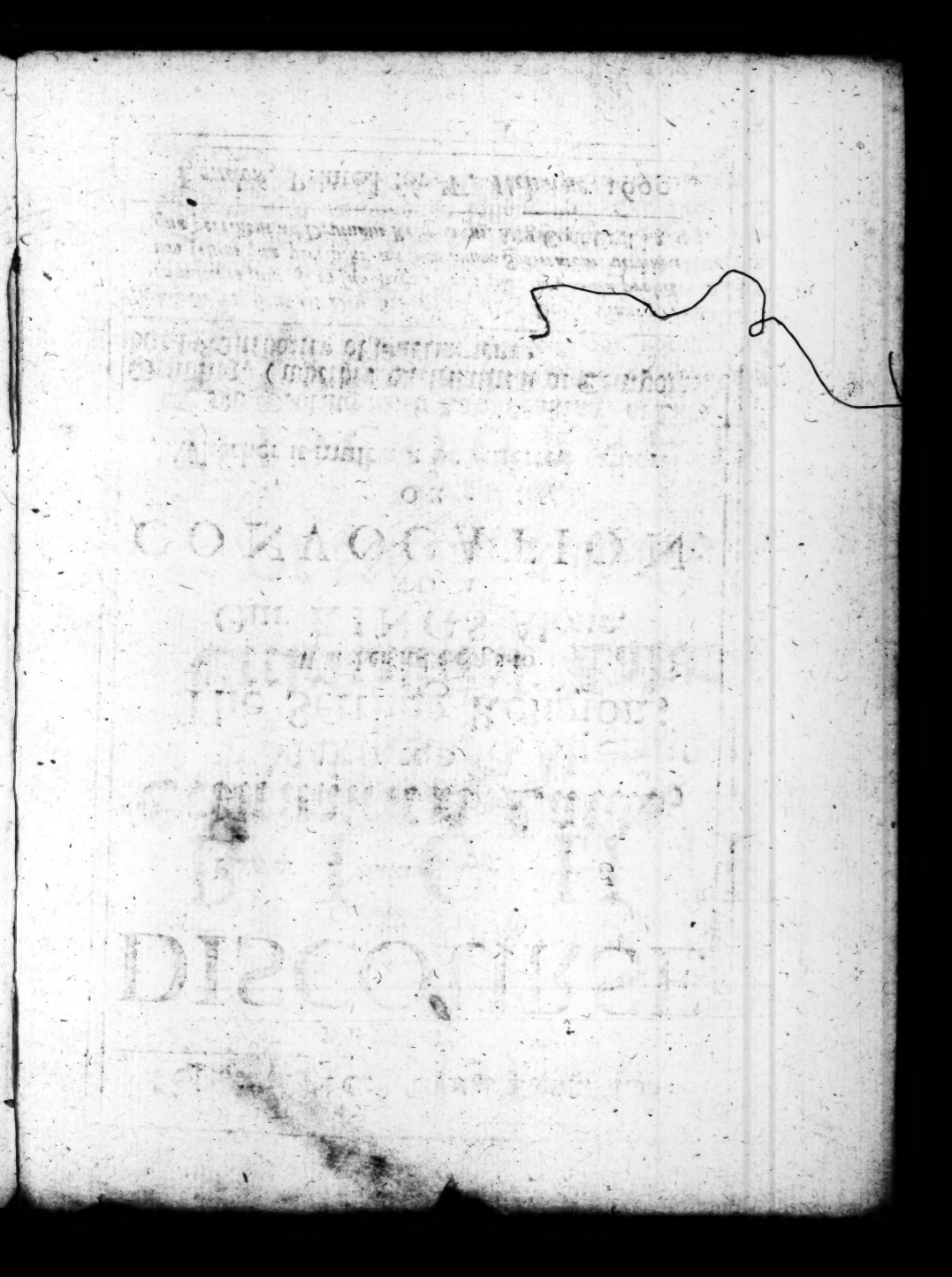

THE

RIGHT

OF

Making and Altering

Eccleſiaſtical Laws,

OR

Of Settling Religion,

Where it lies,

DISCOURSED.

WHEN the Chriſtian Faith was firſt Embraced by the *Saxons*, nothing had the force of a Canon or Eccleſiaſtical Law, but what was Eſtabliſhed in Parliament. *Spelman's* Counſels, and our Old Hiſtorians, ſuch as *Malmsbury*, *Hoveden*, *Weſtminſter*, *Ingulphus*, ſupply us with innumerable Inſtances of this kind, not mentioning any Canons, but what had a Parliamentary Sanction.

The granting Charters of Execution to Abbies, seemed more peculiarly to belong to our Kings as Supream Ordinary; yet the principal Grants of this Nature, even that to *Battle-Abby*, by *William* the Conquerour, was, *Consilio Episcoporum & Barenum meorum.*

After King *William*, the Popes came in time to Usurp such Authority over the Clergy of this Land, as to do even what they pleased, until *Henry* the VIII. put an end to that Usurpation, by assuming the Supremacy.

In this King's Reign (*An.* 25. *c.* 19) an Act of Parliament passes, which grants to the King a Power to assign Thirty Two Commissioners, (Sixteen of the Laiety, and Sixteen of the Clergy) to Examine the Canons for the Abolishing the Ill, and letting the Good stand: And it is Enacted in this Statute, that no Canons shall be Made or Executed without the King's Consent. Upon this Clause it was, that the Judges in King *James's* Reign grounded their Sentence, when they gave him such a Power as I shall mention when I come to it. But other Lawyers do deny, That any such bare *Negative Words* can be a Ground sufficient for raising a *Positive Rule*, as they then did in this Case. It is rather thought better Arguing from this Commission, that no Canons can oblige the Laiety, unless their Representatives be at the Making or Establishing of them.

In *Edward* VI. Time, a like Power is granted to him by an Act, as this was to his Father. Where, Note, That neither *Henry* nor *Edward* had any such Power Inherent to the Crown; for else neither of them had need of any Act of Parliament to give it to them.

In Queen *Elizabeth's* First Year, a Bill of the same Import was brought into the House, and read Twice, and

and ordered to be Engroſſed, but nothing came of it; which nevertheleſs (though it paſſed not) affords us the ſame Argumentation.

In this Year was there an Act of a more grievous nature that paſſed, An Act annexing to the Crown the *Eccleſiaſtical Juriſdiction*, which enabled Her, her Heirs and Succeſſors, with Authority to aſſign Commiſſioners for the Exerciſe of the ſame. Here ariſes the High-Commiſſion Courts, which were ſo great a burden to the Subject, during Her, King *James*, and King *Charles* the Firſt's Reign, until the 17*th* Year of the ſaid *Charles*, and then was this Power repealed.

I muſt take leave here to diſtinguiſh between the Power of *Legiſlation*, whether in Eccleſiaſtical or Civil Matters, and this Power of *Juriſdiction*. When the Parliament gave the Queen ſuch a Power, it is not to be underſtood they intended that She, or King *James* ſhould act ſo Deſpotically in Maaters of the *Church* as they did; but that they ſhould have a Power of *Judgment* (or Juriſdiction) only, and not a Power of making any Law Eccleſiaſtical or Temporal, or altering any thing by Law Eſtabliſhed about Religion, or otherwiſe: For ſuch a Power was, and is to be aſſerted always to belong only to Parliaments. And this may be confirmed by another Act, the Act of *Uniformity*, made the ſame Year, (*An.* 1. *c.* 2.) wherein She is empowered, with the Advice of her Eccleſiaſtical Commiſſioners and Metropolitan, to Make or Alter any of the Rites and Ceremonies, if ſhe ſaw juſt occaſion. This Power now is different from the former, or elſe it would not be given her in another Act; and it did not belong to her Crown, or elſe it would not be given her at all: And it was no more, but as to Rites and Ceremonies. No-

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thing elſe required in that Act of Uniformity, or in the Matter of Religion, could be altered by Her, unleſs by Parliament.

Nevertheleſs, in the Reign of this Queen, and in King *James*'s, the Two Houſes were in a manner quite neglected in matters Eccleſiaſtical. The Queen ſent forth her *Injunctions*; and her Clergy, under her Name (but not under her Seal, as is ſuſpected by the Learned) gave out their *Advertiſements* and *Articles*; and the Queen her ſelf did even Induſtriouſly endeavour to lay aſide all Parliaments as uſeleſs, when things of this nature were to be conſidered. The Queen (I ſay) was very peremptory, in aſſuming to her ſelf an uncontroulable Power in Matters Eccleſiaſtical; but the Commons did the utmoſt they could to maintain their Right, and toward the cloſe of her Highneſſes Reign, obtained it.

In the 8*th* of *Eliz.* Five or Six Bills touching Religion, and Church Government, were read in the Lower Houſe; but becauſe the Houſe was ſuddenly broke up, nothing was done. In the 13. *Eliz.* Seven Bills for Reformation of Religion were read, each Bill three times; but it was declared in the Houſe, That Her Majeſty would not ſuffer theſe things to be ordered by Parliaments: Notwithſtanding which Meſſage (as Sir *Simon Dewes*, in his Journal ſtill has it) the Houſe of Commons proceeded, and ſent up the Bills for Orders of Miniſters, Reſidence of Paſtors, and Commutation of Penance, to the Lords: But the Bill of Subſcription only to the Articles of Faith, and Doctrine of the Sacraments, and not to the Ceremonies or Government, paſſed this Seſſion. In the 14. *Eliz.* the Commons are on the other Bills again; but the Queen, by Mr. *Speaker*, declares her Pleaſure, That from henceforth no Bills concerning Religion be prefer-

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ed, or received into the Houſe, unleſs the ſame ſhould be firſt conſidered, and liked by the Clergy.

In the 35. *Eliz.* Mr. *Morrice*, Attorney of the Court of *Wards*, ſpoke ſmartly againſt the Subſcription enjoyned by Regal Authority, and againſt trying the Clergy who refuſed the ſame, by way of Inquiſition: With him concurred Sir *Francis Knowles*, and Mr. *Oliver St. John*; but Sir *Robert Cecil* ſtood up, and told the Houſe, *That though he knew not what was in the Bill which Mr.* Morrice *had brought in, yet he remembred very well, that it being about Religion, Her Majeſty had ſtreightly forbidden Them to meddle in ſuch Caſes:* And Her Highneſs ſoon after Commanded Mr. Speaker to declare Her Pleaſure, That no Bill, touching Reformation, be exhibited; and if any were, She charged him, on his Allegiance, not to read them. But in the 39. *Eliz.* the Queen conſented, that the Parliament ſhould proceed in the Reformation of the Church.

However King *James* coming to the Crown, he very ſoon orders a Conference at *Hampton-Court*, and makes Alterations in the *Common-Prayer*, without help of *Parliament*; and carrying it on his own Authority, calls a Convocation, and confirms at once, 140 Canons and Conſtitutions Eccleſiaſtical. In his Second Year he cauſes his Judges to meet, and give their Opinion; and they (notwithſtanding the Onerouſneſs hereof to the Subject) do declare, That the King, without a Parliament, might do thus, that is, Make and Impoſe Canons; and Deprive, in caſe of Non-Obedience. Obſerve likewiſe, that this was an extrajudicial Opinion, there being no Cauſe depending before them: Such ſlippery Tongues and Judgments have Lawyers, when they are under the Temptation of Flattering Princes. This you have in *Crook's Reports.*

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After this Sentence, no wonder, that you find the Eccleſiaſticks growing up to an Exorbitancy of Power, during the Reign of this King. And in the Reign of *Charles* the Firſt, *Laud* makes the ſame ſteps. New Conſtitutions are advanced, high enſnaring things deviſed; The *Et-cetera Oath*, Sports on the Lord's Days, impoſed. The Nation can't endure it, Stirs are raiſed, a Parliament forced to be called, and they proſecute a Redreſs of theſe Grievances ſo vehemently, that King and Arch-Biſhop, and the whole Hierarchy with Him, is brought to an end.

In *Charles* the Second's Reign following, there is this one thing Remarkable, That out of favour to the *Papiſts*, he puts forth a Declaration for Liberty of Conſcience to the Diſſenters; he goes not to promote it in the Houſes; if we have Liberty, it muſt hang upon his own Will, or not at all. This the Parliament reſents, and as Illegal oppoſes it, and conſtrains him to Revoke his Declaration. Here was there a plain Conqueſt, and indeed Triumph over the Diſpencing Power of our Kings: And yet *James* the Second, taking the Throne, reſumes the ſame, and perſiſts in it with that Obſtinacy, as we all know, hath occaſioned our preſent Revolution.

The thing that gave the Crown and Clergy their Advantage, was an Error generally received by the common Lawyers, even by Sir *Edward Cook* himſelf, that what Power in the days of Uſurpation was, *de facto*, exerciſed in *England* by the *Popes*, doth, *de jure*, belong to our *Kings*: Whereas indeed, it was not that Unaccountable Power the *Pope* aſſumed, but the Ancient Power only exerciſed by the Kings of *England*, that was reſtored and united to the Imperial Crown: Or, as I have

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de induſtria before diſtinguiſhed, it was not any *Legiſlative Power* without a Parliament, but the Power of *Juriſdiction* only was annexed thereunto.

There are theſe Reaſons for this do appear: 1. From thoſe Acts, and all thoſe Acts of Parliament in *Edward* the *6th*, and *Elizabeth*'s Reign, or any other ſince *Henry* the *8th*, which have given to our Kings or Queens any ſuch Power as I have before mentioned: For ſuch Acts muſt have been needleſs, if they had that Power, and more than that, by their Supremacy only. 2. From thoſe Inſtances that may be given, and more particularly in the matter of Marriages, wherein the *Popes* took power to Diſpence, and our Kings, don't and can't, without the Parliament, as in the late known Lord *Roſs*'s Caſe. 3. *Ab incommodo.* If theſe Lawyers were in the right, then muſt not only all the Arbitrary Proceedings of all our former Princes, which have been ſtill ſo much blamed and redreſſed by Parliaments, but even the doings of our late King *James* the Second, (they being all and every one of them alike grounded upon this bottom) be juſtified againſt the whole Nation, and We condemned. 4. *Ab Authoritate*, From Authority greater than theſe Lawyers, and that is the Opinion of the Houſe of Commons; who in that Year (or a little before) when the Judges gave King *James* ſuch a Power in Eccleſiaſticals, as I have before recited, did cauſe a Meſſage to be delivered to him from them by their Speaker, which I will ſet down in the words of the Journal: *Mr. Speaker in his Speech to the King, declared, That his Majeſty was miſinformed if any Man ſhould deliver, That the King of* England *hath any Abſolute Power in himſelf, either to alter Religion, or to make any Law*

concerning the ſame, otherwiſe than in Temporal Caſes, by conſent of Parliament: 1. Jac. 1. Fol. 567. 569.

The truth is, That during the Reigns of *Elizabeth*, *James* the Firſt, *Charles* the Firſt, when Nonconformiſts were outed of their Miniſtry and Livings by the *Canons*, and not by *legal Trials*, and the ſame Deſpotical Power was exerciſed by thoſe Princes and the Biſhops againſt the *Puritans*, as was exerciſed by *James* the Second, the Eyes of our Churchmen were generally ſhut: But when thoſe Proceedings were turned againſt the *Church*, upon the very ſame Foundation, by the late King, I may righteouſly expect, that the Eyes of ſuch Men now, as well as others, eſpecially of ſome of the Learned (though they had the beam of *Non-reſiſtance* in them before) ſhould be opened to ſee and acknowledg theſe Truths, or Aſſertions of this Paper, *viz.* That it was not a Power of making Eccleſiaſtical Laws, but a Power only that belonged to our Kings before the *Pope's* Uſurpation; that was reſtored to *Henry*. That our Ancient Kings had no Legiſlative Power out of Parliament. That all Canons derive their Force from the King, in his Legiſlative Capacity, that is, as Incorporated with his two Houſes. That they could not of themſelves, before the firſt of *Elizabeth*, grant any Commiſſions for the exerciſe of Eccleſiaſtical Juriſdiction, which yet is leſs than Legiſlation. That the branch of that Law of *Elizabeth* granting ſo much, being Repealed by *Charles* the Firſt, there can never be any other ſuch Courts legally Erected. That Benefices are a Free-hold, and that no Miniſter ought to be deprived of them but by his Peers, or Trial of a Jury. I will add, That the *Subjection*, which is required in the Sacred Scripture, to the *Higher Powers* upon

on pain of *Damnation*, is a ſubjection to the Powers that *Are*, not to the Powers that are *Not*. Now the Powers that *Are*, are the Powers according to the *Conſtitution*. In this Caſe then, let us hearken to Biſhop *Bilſon*, and let Biſhop *Sanderſon* be attended in other Caſes, wherein he was more ſkilful than in Politicks. *If a Prince ſhould go about to Subject his Kingdom to a Foreign Realm, or change the Form of a Commonwealth from Impery to Tyranny*, (that is from Regal to Deſpotical) *or neglect the Laws Eſtabliſhed, to execute his Pleaſure: In theſe and other Caſes, that might be named, if the Nobles and Commons agree together to defend the ancient accuſtomed Liberty, Regiment and Laws, they are not to be accounted Rebels.* In page 520. of his Book, about *Subjection* and *Rebellion*.

Upon the whole that is here related, there may ariſe two Queſtions; which are to be held diſtinct, though apt to be confounded.

The firſt Queſtion is, If theſe things be ſo, what then ſhall we think indeed of the Power of the *Biſhops*? Unto this, that which ſome Lawyers ſay, is, *Edward* the Sixth makes a Law, That the Biſhops ſhall hold no Courts, but in the King's Name. *Mary* Repeals this Law, (or this part of it). King *James* Repeals that of *Mary*. It follows, (ſay they) that *Edward*'s Statute muſt be Revived, and is of Force; If not, the *Common Law* ſtarts up, and that is declared therein, to ſay the ſame. Nevertheleſs, that other Lawyers have ſomething counter to this, and ſome conſiderable thing too, I am not ſo malignant to the Biſhops, as not to believe: Let them that can, and can make it good, tell what.

The Second Queſtion is, And what ſhall we think of the

the *King*'s Power, as to this preſent Eccleſiaſtical Commiſſion? As for which, I muſt confeſs my ſelf ſo throughly ſatisfied with the *Good* intended, that I will ſay no more than this only. Whereas, It was an Act of Parliament, whereby *Henry* and *Edward* had, and *Elizabeth* ſhould have had, the Power to appoint Commiſſions of this kind, that is Eccleſiaſtical ones; though with this difference, that thoſe Commiſſions were to *Determine* things, this Commiſſion only to *Prepare* things for the determination of a Convocation, and the Parliament; which Power yet of *Preparation*, was to have been granted by an Act, if the Bill for Comprehenſion had firſt paſſed, as was intended by both Houſes; and ſo the ſame had been done *Now*, as in former *Reigns*, and then all had been well out of doubt. I do humbly move, both for the vindication of the Right of Parliaments, and Preſervation alſo of the Honour and Pains of the Commiſſionated Biſhops and Doctors, and the taking what they have ſo kindly done in good part; That the Bill only for *Comprehenſion* be the more ſuddenly revived, and that will make up the whole Matter.

When th *Act* ſhould have gone before the *Commiſſion*, becauſe the *Commiſſion* ſhould have bin *Authorized* by the *Act*; to put the *Commiſſion* before the *Act*, hath bin to put the *Cart* (as we ſay) before the *Horſe*: And conſequently, if the Bill be revived, and paſſed, and the Commiſſioners Authorized thereby to preſent what they have *Prepared* to the *Convocation*, and the *Convocation* what they ſhall *Determine* thereupon to the *Parliament*, then will the *Horſe* be re-*united* before the *Cart*, and we ſhall *drive a fair 9*, they being both *ſet right*. The Truth is, the main thing which is *Comprehenſion*, is the buſineſs to be attended; and let but that (which is already in the Bill) be Eſtabliſhed, the ſeveral things, by way of Improvement thereof, with reſpect to the Book of *Common Prayer*, the Book of *Orders*, the Book of *Canons*, the *Government* and *Diſcipline* of the Church (which laſt, do require a more profound Reformation) may ſtay a due time to receive Perfection. They muſt have time to be *Debated*, to be *Compounded*, and *God* knows when ſo great a Work can be done. There is no need, no reaſon that we wait for the *Act* of *Comprehenſion* till then, unleſs we tarry (and it be ſome Ill Mens Plot) to have none at all.

FINIS.